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**REMARKS**

Entry of the above-noted amendments, reconsideration of the application, and allowance of all claims pending are respectfully requested. Claims 1-24 and 27-29 are currently pending in the present application. The Examiner has rejected claims 1-24 and 27-29 under 35 U.S.C. 112, first paragraph. The Examiner has also rejected claims 1-24 and 27-29, under 35 U.S.C. 112, second paragraph. The Examiner has also rejected claims 1, 2, 4, 5, 7-10, 12, 13, 15-18, 20-22, 24, 27 and 28 as being unpatentable over U.S. Patent No. 6,208,619 to Takeuchi in view of U.S. Patent No. 6,108,305 to Charney. The Examiner has also rejected claims 3, 6, 11, 14, 19 and 23 under 35 U.S.C 103(a) as being patentable over Takeuchi and Charney, and further in view of U.S. Patent No. 5,418, 912 to Krishnan.

**CLAIM REJECTIONS UNDER U.S.C. 112, FIRST PARAGRAPH**

The Examiner rejected claims 1, 9, 17, 21, 27-29 under 35 U.S.C. 112, first paragraph. The Examiner alleges that the, "claim(s) contains subject matter which was not described in the specification." Specifically, the Examiner alleges that the there is not a written description for the limitations, "throttling, independent of the at least one application and the provider...without rejecting the stream of data." Applicant respectfully traverses this rejection and request reconsideration of the same.

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Support for the claim limitation, "throttling, independent of the at least one application and the provider...without rejecting the stream of data," is provided in the specification as originally filed. As described in the specification, the aggregate counters are compared to predetermined threshold values for the upstream and downstream data and throttled appropriately. (See page 2 of the specification, lines 13-15).

On page 5 of the specification it is explained that the individual data rate of each stream of data that makes up the combined aggregate stream of data is determined using an individual counter associated with the individual stream of data. If the individual counter exceeds a predetermined threshold value of data bytes, then the stream of data associated with the individual counter is throttled. This is done independent of the application and provider. The individual counters are decremented in a similar way as the aggregate counters. At the expiration of a timer having a predetermined period, such as one second, each of the individual counter values are decremented by a predetermined amount (8,000 bytes). The amount to decrement each individual counter can be unique for each individual counter or all individual counters can be decremented by the same value (8,000 bytes).

On page 11 of the specification it is further explained that if either of the thresholds (aggregate or individual) is exceeded, then the data rate of a stream of data is throttled. The flow control module 608 signals to the implementor 618 via a signal (electrical or software) to throttle the data stream. The implementor 618 in the transport layer provider 616 then throttles the data rate of the stream of data that is being sent to the network 606 by the other transmitter/receiver 620. Therefore, the machine resources are conserved by managing the data flow per unit of time with a shared flow control module 608.

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**CLAIM REJECTIONS UNDER U.S.C. 112, SECOND PARAGRAPH**

The Examiner has rejected claims 1, 9, 17, 21 and 27-29 under U.S.C. 112, second paragraph for lack of antecedent basis for the recited limitation, "the provider". Applicant has properly addressed claims 1, 9, 17, 21, and 27-29 and respectfully requests reconsideration of the same.

**CLAIM REJECTIONS UNDER - 35 U.S.C. §103:**

The Examiner rejected claims 1, 2, 4, 5, 7-10, 12, 13, 15-18, 20-22, 24, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,208,619 to Takeuchi in view of U.S. Patent No. 6,108,305 to Charney. Applicant respectfully traverses this rejection.

MPEP §706.02(j) states: "To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)."

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MPEP §2143.01 states: "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved, as a whole would have suggested to those of ordinary skill in the art. In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)."

Applicants respectfully submit that the Office Action's citations to the applied reference, with or without modification, assuming, *arguendo*, that the modification of the Office Action's citations to the applied reference is proper, does not teach or suggest one or more elements of the claimed invention, as further discussed below.

For explanatory purposes, applicants discuss herein one or more differences between the Office Action's citations to the applied reference and the claimed invention with reference to one or more parts of the Office Action's citations to the applied reference. This discussion, however, is in no way meant to acquiesce in any characterization that one or more parts of the Office Action's citations to the applied reference correspond to the claimed invention.

Applicants respectfully submit that the Office Action's citations to the applied reference do not teach or suggest one or more elements of the claimed invention. A careful reading of the Office Action's citations to the applied reference fails to teach or suggest, for example, "throttling, independent of the at least one application and transport interface provider." Neither, Takuechi, nor Charney, disclose or suggest this claim element. In the Office Action dated May

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18, 2004, the Examiner indicated that the "transmission rate control processor reduces the downstream transmission rate." Applicant submits that the transmission rate control processor does not throttle the transmission rate, "independent of the at least one application and transport interface provider," as required by independent claim 1. In the May 18, 2004 Office Action, the Examiner states that the transport layer interface provider in Takuechi is a ATM exchange 20 comprises switch 201. Takuechi states that, "ATM exchange 20 manage the transmission rate management table 2040 for each VP/VC. Transmission rate control processor 203 in ATM exchange 20 determines the information that is to be notified to upstream congestion notification cells." Col. 10, lines 22-26. Takuechi states that the transmission rate control processor issxda in the ATM exchange 20. If the transport layer interface provider is an ATM exchange, as stated by the Examiner, the transport layer interface provider and transmission rate control processor do not operate independent of each other, as required by independent claim 1 of the present invention. The Office Action's citation to Takeuchi in view Charney fails to satisfy at least one of the Applicant's claim elements.

Furthermore, the Office Action does not allege that art of record provides any teaching, suggestion, or incentive for modifying the citation to Takeuchi in view Charney to provide the claimed approach. There is no motivation or suggestion whatsoever that in Takeuchi that it would be obvious to one skilled art to modify Takeuchi to include transmitting a plurality data streams. Any such suggestion by the Examiner can only be as a result of hindsight analysis.

No combination of the cited references take singly or in combination results in the claimed invention of the present application. The amended independent claim 1 presented herewith is believed is non obvious over the art of the record. The corresponding dependent

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claims are believed allowable for the same reasons as the related independent claims, as well as for their own additional characterizations.

The Examiner rejected claims 3, 6, 11, 14, 19 and 23 under 35 U.S.C. §103(a) as being unpatentable over Takeuchi and Charny and in further view of U.S. Patent No. 5,418,912 to Christenson. Applicant respectfully traverses this rejection.

Applicants respectfully submit that the Office Action's citations to the applied reference, with or without modification, assuming, *arguendo*, that the modification of the Office Action's citations to the applied reference is proper, does not teach or suggest one or more elements of the claimed invention, as further discussed below.

For explanatory purposes, applicants discuss herein one or more differences between the Office Action's citations to the applied reference and the claimed invention with reference to one or more parts of the Office Action's citations to the applied reference. This discussion, however, is in no way meant to acquiesce in any characterization that one or more parts of the Office Action's citations to the applied reference correspond to the claimed invention.

Applicants respectfully submit that the Office Action's citations to the applied reference do not teach or suggest one or more elements of the claimed invention. A careful reading of the Office Action's citations to the applied reference fails to teach or suggest, for example, "transmission rate control processor does not throttle the transmission rate, "independent of the at least one application and transport interface provider." Takuechi states that, "ATM exchange 20 manage the transmission rate management table 2040 for each VP/VC. Transmission rate control processor 203 in ATM exchange 20 determines the information that is to be notified to upstream congestion notification cells." Col. 10, lines 22-26. Takuechi states that the transmission rate control processor issxda in the ATM exchange 20. If the transport layer

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interface provider is an ATM exchange, as stated by the Examiner, the transport layer interface provider and transmission rate control processor do not operate independent of each other, as required by independent claim 1 of the present invention. The Office Action's citation to Takeuchi in view Charney fails to satisfy at least one of the Applicant's claim elements.

Furthermore, the Office Action does not allege that art of record provides any teaching, suggestion, or incentive for modifying the citation to Takeuchi in view Charney in view of Christenson to provide the claimed approach. There is no motivation or suggestion whatsoever that in Takeuchi that it would be obvious to one skilled art to modify Takeuchi to include the claim feature of transmitting a plurality data streams, nor is there any suggestion in Takeuchi that it would be obvious to one skilled in the art to modify Takeuchi in view of Charney to include an incrementing and decrementing counter. Any such suggestion by the Examiner can only be as a result of hindsight analysis.

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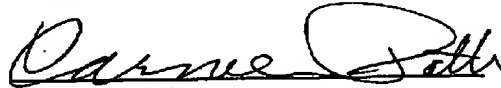
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No combination of the cited references take singly or in combination results in the claimed invention of the present application. The amended independent claim 1 presented herewith is believed is non-obvious over the art of the record. The corresponding dependent claims are believed allowable for the same reasons as the related independent claims, as well as for their own additional characterizations.

Withdrawal of the §112 and 103 rejections are therefore respectfully requested.

In view of the above amendments and remarks, allowance of all claims pending is respectfully requested. If a telephone conference would be of assistance in advancing the prosecution of this application, the Examiner is invited to call the applicants' attorney.

Respectfully submitted,



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